

EXHIBIT 11

ANDERSON vs. MADAJ, et al. DEPO: OFFICER BRIAN D. GUEST

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

13680
RECEIVED

DOROTHY ANDERSON and
DEMARQUION MERRILL, as
Co-Personal Representative
of the Estate of BOBBY
MERRILL, deceased,

DEC - 3 2013

Fieger, Fieger, Kenney,
Giroux and Danzig, P.C.

Plaintiffs,

Case No.: 13-11159

vs.

Hon. Thomas Ludington

OFFICER JEFF MADAJ, individually,
OFFICER JUSTIN SEVERS, individually,
OFFICER BRIAN GUEST, individually, and
OFFICER STEVEN WIETecha, individually,

Defendants.

_____/

The Deposition of OFFICER BRIAN D. GUEST, taken
before David S. Ripka, CSR-2175 and Notary Public in and for
the County of Genesee, acting in the County of Saginaw, State
of Michigan, at the offices of Ripka, Boroski & Associates,
One Tuscola Street, Suite 301, Saginaw, Michigan, on Thursday,
November 21, 2013, commencing at or about 12:56 p.m.

APPEARANCES:

Fieger, Fieger, Kenney, Giroux, Danzig & Harrington, P.C.
BY: ROSS A. BRUNETTI, ESQ. (P73080)
19390 West 10 Mile Road
Southfield, Michigan 48075
(248) 355-9049

Appearing on behalf of Plaintiffs,

ANDERSON vs. MADAJ, et al. DEPO: OFFICER BRIAN D. GUEST

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1	APPEARANCES (Continued):	1	Saginaw, Michigan
2	Plunkett Cooney	2	Thursday, November 21, 2013
3	BY: H. WILLIAM REISING, ESQ. (P19343)	3	12:56 p.m.
4	111 East Court Street	4	PROCEEDINGS
5	Suite 1B	5	OFFICER BRIAN D. GUEST,
6	Flint, Michigan 48502	6	having been duly sworn by the Reporter, was examined, and
7	(810) 342-7001	7	testified on his oath as follows:
8	Appearing on behalf of Defendants.	8	MR. BRUNETTI: This is the date and time of the
9		9	deposition for Officer Brian David Guest taken pursuant
10		10	to notice and in conformity with the Federal Rules of
11		11	Civil Procedure.
12		12	EXAMINATION
13		13	BY MR. BRUNETTI:
14		14	Q Officer Guest, my name is Ross Brunetti. I'm the
15		15	attorney on behalf of the estate of Bobby Merrill.
16		16	How are you today?
17		17	A Good. How are you?
18		18	Q Doing well. Thanks.
19		19	I'm sure your attorney has already talked to
20		20	you a little bit about this. All right? A deposition is
21		21	basically a fancy name for just a formal question-answer
22		22	session. Okay?
23		23	A Sure.
24		24	Q So I'm going to ask you questions. You provide answers.
25		25	Understand?
Page 3		Page 5	
1	INDEX OF WITNESS	1	A Yes.
2		2	Q All right. When you provide answers, please provide
3	WITNESS PAGE	3	answers with a clear yes, no, or a verbal response.
4	OFFICER BRIAN D. GUEST	4	Reason being, the court recorder cannot record yeahs,
5	Examination by Mr. Brunetti 4	5	uhs, unh-unhs or nonverbal shakes or nods of your head.
6		6	Do you understand?
7		7	A Yes.
8		8	Q Okay. Also, please refrain from answering a question
9		9	until I've finished asking the question. Likewise, I'll
10		10	try to offer you the same courtesy of not starting the
11		11	next question or speaking over you while you're
12		12	answering. Okay?
13	INDEX OF EXHIBITS	13	A Okay.
14		14	Q And, again, the reason being, we have our court recorder
15	EXHIBIT DESCRIPTION MARKED	15	here, and we have to make sure that the record is
16		16	perfectly clear so that we can understand it when we go
17	Exhibit 1 Defendant Brian Guest's Answers 137	17	back later on and read it. All right?
18	to Plaintiff's Request to Admit	18	A Sure.
19	Directed to Defendant Officer	19	Q Okay. Also, if you don't understand a question that I
20	Brian Guest	20	ask, it is perfectly acceptable to say, "I don't
21		21	understand your question. Could you please rephrase your
22		22	question," or give me some indication that you don't
23		23	understand. And I'll do my best to ask it in a way that
24		24	makes sense. Okay?
25		25	A Okay.

(Pages 2 to 5)

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 Firm Registration No. 008139

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- 1 silhouette?
- 2 A I think so, yeah. But I don't remember exactly. Just
- 3 remember a silhouette.
- 4 Q Were you ever instructed as to the distances from the
- 5 target that you're supposed to deploy the taser?
- 6 A Yes. There's different cartridges that you could have.
- 7 I think the ones that we had at the time were either 15
- 8 or 20 feet cartridges, as far as maximum distance. And I
- 9 think that they prefer that you don't shoot somebody
- 10 within, I don't know, one or two feet.
- 11 Q So they want you take a shot from further back than two
- 12 feet?
- 13 A Yes, it's preferred. Because it'll have more of an
- 14 effect. The farther the probes are spread apart, the
- 15 more of an application can be applied on somebody. The
- 16 closer they are, then it's not going to be as strong.
- 17 Q Were you ever told anything about the dangers of shooting
- 18 from further distance? So let's say if the max distance
- 19 is 20 feet on those cartridges, shooting from 18 or 19
- 20 feet, is there an issue with shooting near the max range
- 21 of the cartridge?
- 22 A No. I think there would be less of an issue with that
- 23 than even close range. It's just your accuracy is going
- 24 to be, you know, less the farther back you go.
- 25 Q When you deploy the probes, so not drive-stun mode, but

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- 1 the probes in the cartridge, when you deploy the probes,
- 2 after the probes make contact with the target, do you
- 3 have the option of preventing a charge from going
- 4 through, or once you fire the probes, is a charge
- 5 automatically going to go through if it hits the target?
- 6 A Can you repeat that?
- 7 Q That was kind of a bad question.
- 8 Let's say hypothetically you're aiming your
- 9 taser at a target, okay?
- 10 A Okay.
- 11 Q An individual. You deploy the probes, and the probes
- 12 strike the target.
- 13 A Okay.
- 14 Q You follow me?
- 15 A Yes.
- 16 Q After the probes strike the target, does the charge
- 17 automatically transfer through the wires to the probes,
- 18 or do you have to actively keep the trigger held down in
- 19 order to deploy a charge?
- 20 A It'll automatically -- once you pull that trigger, it's
- 21 going to give a charge no matter if you keep your finger
- 22 on it or not.
- 23 Q Okay. So if the probes hit in an area that you didn't
- 24 want them to hit, you couldn't stop them --
- 25 A Right.

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- 1 Q -- from emitting a charge?
- 2 A You could try to take the cartridge off the end of it.
- 3 Q Okay. But you couldn't do something --
- 4 A No.
- 5 Q -- as simple as just take your finger off the trigger?
- 6 A No.
- 7 Q All right.
- 8 A And when I say those areas that you don't want to --
- 9 that's just preferable that you don't hit those. It's
- 10 going to -- you know, it could happen.
- 11 Q Right. It's going to hit where it's going to hit?
- 12 A Right. How accurate they are. They're fairly close, but
- 13 I've seen some that I don't -- that aren't as accurate as
- 14 others, just like a firearm.
- 15 Q Right. So how often would you say -- well, let me ask
- 16 you this: How accurate would you say those tasers are?
- 17 A More accurate than the second ones we got.
- 18 Q Really? So the X26 was better than whatever they were
- 19 replaced with?
- 20 A I think they were more accurate, personally. But they
- 21 were fairly -- fairly accurate. You've got to remember,
- 22 when you're aiming, your first dart is going to be where
- 23 you're aiming. Your second one is going to drop below.
- 24 Q Right.
- 25 A And depending on how far you are it's how far it's going

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- 1 to drop, so --
- 2 Q Right. Because, obviously, depending on the angle, the
- 3 farther you are, it's got more room to, again, drop?
- 4 A Right. And in the heat of the moment, I mean, sometimes
- 5 you've got to use your taser quick, so it's more
- 6 difficult.
- 7 Q Yeah. Are you familiar with the term "the force
- 8 continuum"?
- 9 A Yes.
- 10 Q Could you explain to me what the force continuum is.
- 11 A It's force continuum that law enforcement has designed to
- 12 train police officers.
- 13 Q What is the purpose of the force continuum?
- 14 A To let officers know what level of force they could use.
- 15 Q How many levels are there?
- 16 A I couldn't tell you exactly the amount of levels they
- 17 have.
- 18 Q Is it more than one?
- 19 A Yes.
- 20 Q Okay. So I imagine the purpose of the force continuum is
- 21 to make a big distinction between when it's acceptable to
- 22 use deadly force and when it's acceptable to use nondeadly
- 23 force, correct?
- 24 A Right.
- 25 Q And then within that exception of nondeadly force, then

(Pages 30 to 33)

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1 you probably have multiple levels of nondeadly force
2 levels, correct?
3 A Correct.
4 Q Okay. Do you know to what extent -- can you tell me what
5 is the least amount of force that an officer can use?
6 A Officer presence.
7 Q Okay. And when is an officer expected to just use
8 officer presence?
9 A Just when he arrives on scene or he has any contact with
10 anybody.
11 Q And what sort of behavior that a subject, person of
12 interest, suspect, what have you, what behavior of that
13 person is sufficient to just use officer presence?
14 A I don't know if I understand that question, but --
15 Q Well, let me ask it this way: At what point would you
16 elevate your response from your presence to the next
17 level?
18 A To verbal commands?
19 Q Yes.
20 A There's many situations you could use for that. It's
21 hard to give a -- I mean, I could give you a couple
22 specific examples, but, I mean --
23 Q What's the sort of -- is there a tipping point at which
24 point you would start using verbal commands?
25 A Yeah, there's a lot of them.

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1 Q What is the most basic tipping point you can give me?
2 A Oh, I don't know. I mean, if somebody's putting their
3 hands in their pockets, and I say, you know, "Take your
4 hands out of your pockets," or, "Can I see your driver's
5 license and registration?"
6 Q Okay. And so then if someone failed to respond to those
7 verbal commands, what is the next step?
8 A Maybe nothing. It just depends on what kind of situation
9 you have.
10 Q Right. Let's say that someone... let's say that someone
11 is behaving -- you've got a complaint that someone is
12 behaving in a disorderly manner.
13 A Okay.
14 Q Okay? And you arrive on scene, and you look at this
15 person, okay? And you give them an instruction. You
16 say, "Sir, stop what you're doing," okay? And that
17 person stops what they're doing, but they start to walk
18 away from you. What would your next move be?
19 A Maybe nothing. Maybe I'll let them walk away.
20 Q Okay. If were you concerned about the behavior that they
21 had been exhibiting before you arrived, like someone
22 called and said they were doing something a little funny,
23 what would you do if they were walking away and you
24 wanted to have -- and you wanted to sort of investigate?
25 A Walk up to them and start talking to them.

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1 Q Okay. That would be your response? You would start
2 talking to them?
3 A Mm-hmm.
4 Q Is that a yes?
5 MR. REISING: You have to answer out loud,
6 Brian.
7 THE WITNESS: Yes.
8 MR. REISING: That's okay. Thanks.
9 Q (BY MR. BRUNETTI) And so you wouldn't at that point
10 issue another command. You'd try to get their attention
11 to see if you could talk to them?
12 A Sure. Depending on the person, yeah.
13 Q Okay. If you walked up to them and you tried talking to
14 them, and they didn't respond, they just kept walking
15 away, what would you do?
16 A I mean, if I wasn't going to make an arrest, I would just
17 let them walk away --
18 Q Okay.
19 A -- and be on my way.
20 Q What if you thought that person was under the influence
21 of an intoxicating substance?
22 A Doesn't make a difference to me.
23 Q All right. So you wouldn't try to apprehend them at that
24 point?
25 A I don't know what I would apprehend them for, no.

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1 Q Okay.
2 A Based on that, just what you said, no, I wouldn't.
3 Q All right. So at that point, would you agree with me
4 that if someone is walking away without saying anything
5 threatening or doing anything threatening, that trying to
6 put your hands on them would be excessive force?
7 A If there's no other circumstances than what you just gave
8 me, no, I still wouldn't say that it's excessive force.
9 But, I don't know, it's hard to give scenarios. And for
10 me to -- I mean, what does the guy look like? What's his
11 demeanor? I don't -- I don't know. I mean, it's hard
12 for me to give an example of --
13 Q Okay. Let me try to give a little better example. Let's
14 say that you've got a guy who... let's say you've got a
15 guy who's stopping traffic in the middle of the street,
16 okay?
17 A (Nodding head affirmatively)
18 Q Follow me?
19 A Yes.
20 Q Okay. Let's say there's a complaint that he's stopping
21 traffic in the middle of the street, but at this point
22 he's not hurting anybody. He's not -- at this point, the
23 biggest danger he is is possibly to himself and not other
24 people.
25 A Okay.

(Pages 34 to 37)

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1 Q Okay? You arrive on the scene, all right?

2 A (Nodding head affirmatively)

3 Q You get out of the car, and you look at him, and you give

4 him an instruction: "Sir, get out of the street." Is

5 that the first thing that you would do?

6 A Sure.

7 Q What if he didn't respond?

8 A Then I would have to take him out of the street somehow.

9 Q Okay. What would you do if, as you approached, he put

10 his hands up and kind of shuffled away from you?

11 A That's hard to say what I would do. I mean, I'd have to

12 get him out of the street. I mean, they're going to have

13 to go hands on or -- I don't have a lot of time to play

14 with -- if the street's busy, you know. If it was just a

15 residential area, I would have a little bit more

16 leniency, but --

17 Q Okay. Let's say that traffic's stopped, okay? So

18 traffic's stopped. They see the guy. At this point,

19 even though he's in the street, he's not in imminent

20 danger of getting hit, okay?

21 A Okay.

22 Q He's standing with his hands up, and he starts to shuffle

23 away from you. What's your response?

24 A I'm going to continue giving him verbal commands.

25 Q That's what you're going to do, you're going to give him

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1 verbal commands?

2 A Yes.

3 Q Are you going to try to reason with the guy?

4 A I'm going to try, yeah.

5 Q Okay. What are you going to do if you can't reason with

6 him?

7 A I mean, is he still just keeping his hands up, shuffling

8 away? I mean --

9 Q His hands are up, and he's shuffling away.

10 A He's in the street still?

11 Q He's still in the street?

12 A I mean, I'm pretty patient. I'm going to probably give

13 him some verbal commands. But at the point that I

14 realize he's not going to listen to my verbal commands,

15 I'm going to have to do something, whether it's hands on,

16 activate my taser, something to get him out of the

17 street.

18 Q Okay. Would you agree that while he has his hands up and

19 is shuffling that he's not a danger to you?

20 A If he's shuffling away from me with his hands up?

21 Q Yes.

22 A At that point in time, I would say no, he's not.

23 Q Okay. At that point in time, would you say that he's a

24 danger to somebody else other than himself?

25 A Not at that point in time, no. I would say he's not.

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1 Q Okay. Would you say that in that situation that it would

2 be excessive force to draw your gun and use deadly force

3 on him?

4 A Yeah.

5 Q Okay. Would you say in that situation that it would be

6 excessive force to draw a taser and use a taser before

7 you tried a lesser means of force?

8 A No.

9 Q Okay. So you're saying that it wouldn't be excessive

10 force to use a taser before you approached him and tried

11 to reason with him, maybe take him by the arm and pull

12 him out of the street?

13 A Beforehand?

14 Q Yes.

15 A I mean, as far as our department policy and training

16 goes, it's not excessive force. But I personally would

17 try to reason with him verbally.

18 Q Because that's what seems reasonable to you, right?

19 A Yeah, it must be, because that's what I do.

20 Q Okay. But you're saying at that point, if he's not a

21 physical threat to you, and he's not a physical threat to

22 other people, that it would be appropriate to deploy your

23 taser?

24 A Yes. At that point, if he was out in the street, and he

25 wasn't listening to verbal commands, depending on -- I

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1 mean, there's going to be more circumstances. Do I think

2 that this guy's got some mental issues? Do I think maybe

3 he has a weapon? There's a lot of I don't knows.

4 Q Would you do anything to make sure that he did or did not

5 have a weapon before you deployed the taser?

6 A Given that scenario, I don't think I would approach him,

7 because I don't know if he does have a weapon. It would

8 probably be the safest thing to activate your taser and

9 then check.

10 Q And then check?

11 A Yes.

12 Q Okay. Would you... strike that.

13 Do you treat anyone differently if you think

14 they're under the influence of an intoxicating substance?

15 A Yes.

16 Q How do you treat someone differently?

17 A I try to be a little more patient. Because sometimes

18 people under the influence only hear what they want to

19 hear. I treat everybody differently depending on what

20 the situation is.

21 Q Okay. Do you have any policies or procedures within the

22 police department that tell you how you're supposed to

23 treat somebody if they're under the influence of a

24 substance?

25 A No.

(Pages 38 to 41)

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1 Q So you indicated his hands were by his chest. What did
2 his hands look like? Were they open hand? Were they
3 closed hand?
4 A I don't recall. You've got to remember, I mean, this
5 happened pretty quick.
6 Q I understand. I'm just trying to get to the best of your
7 recollection what you can remember.
8 A Sure.
9 Q All right?
10 So you looked at him. You said he was walking
11 towards you?
12 A Yes.
13 Q As you were pulling up, you said you also saw Officer
14 Severs with a taser drawn, correct?
15 A Yes.
16 Q All right. So as you're getting out of the car, and you
17 see this guy with his hands up, okay, coming toward you,
18 did Officer Severs do anything to him as this is going
19 on?
20 A No.
21 Q You didn't see Officer Severs deploy his taser?
22 A I don't think so, no. I think he already had it deployed
23 on him.
24 Q Did this black male suspect -- did you ever learn his
25 name?

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1 A I didn't know that, no.
2 Q Did you suspect that?
3 A No. I didn't even think about that at the time.
4 Q Did it look like anything that you had said, that he had
5 even heard it?
6 A I know he heard it, but I don't know -- it didn't -- it
7 didn't click with him. He either didn't care or he
8 wasn't listening.
9 Q Okay. So after he is standing there in this what you
10 described as a fighting stance, okay, and you instructed
11 him to get on the ground, and he didn't comply, what did
12 you do next?
13 A Pulled my taser out.
14 Q And your taser is on your utility belt at this point?
15 A Yes.
16 Q What did you do after that?
17 A Well, first Officer Wietecha tasered him, but --
18 Q So as you're pulling your taser out, Officer Wietecha
19 tasered him?
20 A Mm-hmm.
21 Q And you actually saw that?
22 MR. REISING: Excuse me. You've got to say --
23 give a verbal answer.
24 MR. BRUNETTI: Yeah.
25 MR. REISING: I think your answer is yes, but I

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1 A Yes.
2 Q What's his name?
3 A Bobby Merrill.
4 Q Okay. Did Bobby ever say anything to you after you told
5 him to get on the ground?
6 A I don't recall. I remember him saying things. But at
7 that point in time, I don't remember if he said anything
8 or not. I think he was. I don't remember what he said,
9 though.
10 Q Okay. Did he appear to be lucid at the time that you
11 told him to get on the ground?
12 A What's lucid?
13 Q Did he appear to be of clear mind?
14 A No.
15 Q Why would you say he wasn't?
16 A He just -- it's hard for me to explain, but --
17 Q To the best of your ability.
18 A It looked like anything I was telling him, it didn't
19 matter. He had a blank stare, a thousand-yard stare.
20 Q So you saw him with a blank stare?
21 A That's what it looked like to me, yes.
22 Q Did you interpret that stare to mean anything?
23 A Yeah. Be careful.
24 Q Did you believe that he, based on the way that he looked,
25 that he was on any kind of a substance?

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1 want to --
2 THE WITNESS: Yes.
3 MR. REISING: -- get the answer.
4 Okay. Thanks.
5 MR. BRUNETTI: Thank you, Counsel.
6 Q (BY MR. BRUNETTI) When Officer Wietecha deployed his
7 taser, did he deploy it in stun mode, or did he deploy
8 the barbs, the probes?
9 A Probes.
10 Q How far away was Officer Wietecha standing from Bobby
11 Merrill?
12 A I don't know.
13 Q Was he closer to Bobby Merrill than you were?
14 A I don't know.
15 Q How close were you to Bobby Merrill?
16 A Ten feet maybe. I'm just guessing.
17 Q Were you further away than we're sitting --
18 A Yes.
19 Q -- right now?
20 And we are sitting approximately three
21 and-a-half feet away from each other?
22 A Approximately, yeah.
23 Q And your best estimate right now is that you were about
24 ten feet away from Mr. Merrill?
25 A Or more, yes.

(Pages 66 to 69)

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<p>1 Q When Officer Wietecha deployed his taser on Bobby Merrill, did you see where the barb struck?</p> <p>2 A Yeah.</p> <p>3 Q Where?</p> <p>4 A Somewhere in his jacket, his chest area.</p> <p>5 Q Did both of them strike there?</p> <p>6 A I don't know if both of them did. I know one did. I knew it didn't do anything.</p> <p>7 Q Why do you know it didn't do anything?</p> <p>8 A Because it never penetrated him. It hit his jacket.</p> <p>9 Q What kind of jacket was he wearing?</p> <p>10 A Leather jacket.</p> <p>11 Q Do you remember what color it was?</p> <p>12 A No.</p> <p>13 Q Do you remember the style of jacket?</p> <p>14 A No. I mean, it was just a leather jacket. It wasn't a long -- you know, it was down to about waist length. I could tell that neither Officer Severs or Officer Wietecha's probes had made contact with him. His clothing was too thick.</p> <p>15 Q So at that point, you believe he was still wearing a jacket?</p> <p>16 A Yes.</p> <p>17 Q All right. Did you see a shirt under the jacket?</p> <p>18 A Yeah.</p>	<p>1 Q Okay. Did Officer Wietecha tell Bobby Merrill he was going to deploy his taser?</p> <p>2 A I don't know.</p> <p>3 Q What verbal commands did you give Bobby Merrill after you saw that the taser deployed by Wietecha didn't work?</p> <p>4 A I don't know. I think I just told him to keep getting on the ground, something like that.</p> <p>5 Q Were you shouting or talking?</p> <p>6 A Probably shouting.</p> <p>7 Q At this point, you indicated that you had pulled your taser, correct?</p> <p>8 A Yes.</p> <p>9 Q As you were giving these instructions, where was your taser pointed?</p> <p>10 A Probably at him. I don't know. Maybe I had it down by my side.</p> <p>11 Q What would you typically do in a situation like that?</p> <p>12 A As far as where I would put my taser?</p> <p>13 Q Where would you -- yeah, where would you direct it as you were giving an order?</p> <p>14 A Probably right at him.</p> <p>15 Q Okay. And do you remember how many times you told him to get on the ground?</p> <p>16 A No.</p> <p>17 Q How long after Officer Wietecha attempted to deploy his</p>
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<p>1 Q What color was the shirt?</p> <p>2 A I don't know. I don't remember.</p> <p>3 Q Was he wearing pants or shorts?</p> <p>4 A Pants.</p> <p>5 Q Do you remember what color they were?</p> <p>6 A Blue jeans, I think.</p> <p>7 Q So you think they were jeans?</p> <p>8 A Yes.</p> <p>9 Q Do you remember what kind of shoes he was wearing?</p> <p>10 A No.</p> <p>11 Q All right. So what happened after Officer Wietecha deployed his taser on Bobby Merrill?</p> <p>12 A Didn't do anything. He was still -- it was not effective to him.</p> <p>13 Q And, again, why do you say it was not effective?</p> <p>14 A Because I don't think any of the probes -- I don't think the probes had penetrated him at all.</p> <p>15 Q When I say how do you know it was not effective, did he respond at all --</p> <p>16 A No.</p> <p>17 Q -- to the taser device?</p> <p>18 A No.</p> <p>19 Q So what happened next?</p> <p>20 A I continued to give him verbal commands, and then I activated my taser on him.</p>	<p>1 taser did you deploy your taser?</p> <p>2 A Pretty quickly.</p> <p>3 Q About how long in time, if you can give an estimate?</p> <p>4 A I can't. I really don't know. Pretty quick, though.</p> <p>5 Q How many times -- Scratch that. You've already said you don't know.</p> <p>6 A I could see where his probes had hit him, and I knew that it didn't penetrate him. So, I didn't waste a lot of time. I aimed for his leg, because I knew there would be a better chance of it penetrating his leg.</p> <p>7 Q And did you actually strike him in the leg with the taser barbs?</p> <p>8 A Yes.</p> <p>9 Q Did you see the taser barbs strike him in the leg?</p> <p>10 A One of them, yeah.</p> <p>11 Q All right. And did he respond to that deployment of the taser?</p> <p>12 A Yeah, he fell down on the ground.</p> <p>13 Q Where was he standing at the point that he fell on the ground?</p> <p>14 A He kind of took a few steps before he fell down. He started to walk around, started to tumble in front of Officer Wietecha's vehicle, the front end. And then he kind of fell around the side of it, like in the middle of Washington Street, kind of by his driver's side door.</p>

(Pages 70 to 73)

ANDERSON vs. MADAJ, et al. DEPO: OFFICER BRIAN D. GUEST

TAKEN: 11-21-13

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1 A Yes.

2 Q Are you the only officer that called MMR?

3 A Yes.

4 Q Why did you call MMR?

5 A Because of his behavior, I thought that he needed to be

6 evaluated.

7 Q When did you decide that MMR needed to be called?

8 A As soon as he was safely secured, I called.

9 Q So as soon as he was in the patrol car?

10 A No, before that. He was on the ground. I would have

11 called as soon as possible. Whenever I got -- when --

12 the first free chance I got, I called.

13 Q So did you call MMR before or after Bobby Merrill's legs

14 were bound?

15 A Might have been during. I'm not sure. I didn't -- I

16 didn't bind those. So once his -- once he was cuffed

17 from behind, at some point in time I called.

18 Q Are you sure that you called them before he was moved to

19 the car?

20 A Yeah, I think so.

21 Q You think so?

22 A Yeah, I think so. I remember standing in the street, and

23 I was getting ready to call MMR, and I asked Officer

24 Madaj, I'm like, "You want to get MMR coming here?" And

25 he didn't answer.

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1 Q How long after MMR got there did MMR leave with Bobby

2 Merrill?

3 A I don't know. I didn't really have a lot of contact with

4 the other officers once he was placed in the car.

5 Because I kind of assumed responsibility of keeping

6 everybody back.

7 And, matter of fact, I was the last officer to

8 leave the scene from that group of officers. Because it

9 didn't -- supervisors didn't even realize I had taken any

10 part in the incident.

11 Q What time did you leave the scene?

12 A I don't know. I don't even know if I advised Central. I

13 just had a supervisor -- I had my lieutenant come up to

14 me and say, "Hey, what happened here?" And she already

15 knew anyways and --

16 Q What is your lieutenant's name?

17 A Luty, Lieutenant Luty.

18 Q Can you spell that?

19 A L-U-T-Y.

20 Q Okay.

21 A And she says, "Were you involved?" I said, "Yeah." She

22 said, "Why are you still here?" I said, "Well, I haven't

23 been relieved of duty yet."

24 Q Was she the only supervisor who was on scene?

25 A No.

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1 I said, "He probably needs to be evaluated,

2 right?" And he's, like, "Yeah." So I remember calling

3 them.

4 Q All right. So you're taking statements from these

5 witnesses. You turn and you see MMR. And what other

6 officers are by the car while MMR is there?

7 A Well, he's -- Bobby Merrill's out on the ground on the

8 grass by the time I turned my back.

9 Q Okay.

10 A And I see Officer Madaj there, and I think Officer Severs

11 was standing next to him, and then MMR personnel. But

12 then this is the point where I really needed to crowd

13 control because people were trying to get in there. So I

14 had to keep people back and stuff.

15 I mean, I kind of looked over. I was shocked.

16 I could see that they were giving CPR to him.

17 Q Who was giving CPR?

18 A I think Officer Madaj was.

19 Q What was the emergency medical team doing?

20 A Assisting.

21 Q Okay. Do you know how long CPR was administered?

22 A No.

23 Q How long was Bobby Merrill out of the car and on the

24 ground?

25 A I don't know.

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1 Q Who were the other supervisors on scene?

2 A Sergeant Carpenter. He's a lieutenant now, I think.

3 Q Anyone else?

4 A There was some -- none of mine. I know there was the

5 state police there.

6 Q You said state police were there as well?

7 A Yeah. I don't know their names, though. They might have

8 been the investigating officers.

9 Q Do you remember any other officers that you know being

10 there?

11 A Yeah.

12 Q Who?

13 A Officer Bucholtz showed up.

14 Q Spell that.

15 A I'm going to have to write it. I think it's B-U-C-H --

16 or maybe C-K, holtz.

17 Q Is it Buchold?

18 A Bucholtz.

19 Q Colts, with a "T"?

20 A Yes.

21 Q And either an "S" or a "Z"; is that --

22 A It's a "Z."

23 Q Okay. Any other officers?

24 A Yeah. Officer -- well, Officer Llewellyn, he took my

25 spot.

(Pages 106 to 109)